

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-11192-NMG

FILED
U.S. DISTRICT COURT
MASSACHUSETTSEric Kelley,
Plaintiff,

v.

Sheriff DiPaola, Superintendent Norton,
Officer Thurmond Hall, Sgt. Flynn,
Billerica House of Correction Legal Dept.,
Attorney Lee Gartenberg, Attorney John
Goggin, Commissioner of the
Massachusetts Board of Health,
Commissioner of Public Safety,
and Billerica Board of Health,
Defendants.further Complaints of
Continued Violations.
Plaintiff / Pre trial
Detainee Awaiting
trial In a maximum
Security Infamous
Punishment setting.

The plaintiff, who is a pre-trial detainee with the presumption of innocence, & unadjudged guilty is at the time of this writing in the H.S.U. (Hospital Segregation Unit) at the states highest security Penitentiary. This violation pursuant to Brown v. Commissioner (where a district court SENTENCED inmate was not allowed placement in Walpole) yet the unsentenced plaintiff has been there for approx 3 weeks.

In Support is A
Affidavit.

Eric Kelley (pro se)

(Affidavit Of
Eric Kelley)
FEDERAL OFFICE
JULY 8 A.M. 33
I truthfully
depose;

- 1) I was sent from SBCC (Sasha Baronawski) max. security to MCI Walpole (Cedar Junction) the only State Penitentiary. I was sent because I informed (SBCC) Warden Louise Russo that placing a Pre-trial detainee in a Prison (Punishment) setting was unconstitutional.
- 2) the Plaintiff is fearful of his life w/ noted, documented enemies in Cedar Junction.
- 3) Based on his notification to Prison officials he was locked up in the H.S.U. (Hospital SEGREGATION Unit) rather than transferred to any safe D.O.C. Prison Plaintiff has not acquired any Disciplinary Report or infraction or hearing.

Affidavit
(cont.)

4) Although no disciplinary infractions or hearings exist, Plaintiff is housed in H.S.U. for approx 2 weeks;

1) Plaintiff is not getting law library although he is Pro Se. in his criminal case.

Violations of Health Codes;

- 1) no Sprinklers (fire alarm or fire extinguishers in the cell. (or corridors)).
- 2) old lice filled mattresses, feces, urine, saliva dried w/blood on doors, walls, beds,
- 3) No laundry provisions
- 4) 30 - 40 degree room temperatures
- 5) confiscated all Plaintiff's legal works.
- 6) one SOX, 1 TEE Shirt, no under shorts And others (see ex. grievance)

See Memorandum "Jenkins)" case

Respectfully Eric Kelley
Pro Se

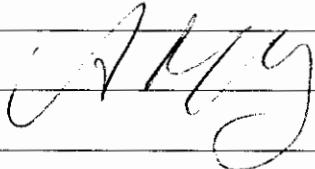
Certified
No copy
machine
access

COMMONWEALTH OF MASSACHUSETTS**DEPARTMENT OF CORRECTION****INMATE GRIEVANCE FORM****FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)**

Name	KELLEY ERIC	Grievance#	9935	Institution	OLD COLONY CORRECTIONAL
Commit No.	A93317	Housing	SEGREGATION UNIT	Date Of Incident	CENTER
				20050420	Date Of Grievance
					20050425

Complaint from nahual st. jail, to concord, and now at OCCC I've been placed in segregation absent a disciplinary hearing or sanctions. During all that time (3 weeks) I have not obtained a P.I.N. # to call any lawyer(s) I finally received a form at OCCC and was denied the number of attorneys I could call I was told I was limited to 5 lawyers numbers. I requested 11 and all the lawyers have a significant role in my legal matters. What policy limits # of lawyers an inmate can call???

Remedy Requested 8 direct attorney call until I get a approved P.I.N. # and approval of All lawyers.

Staff Recipient McKenzie Amanda CO I 

Staff Involved

Signature

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20050425 Decision Date

Signature

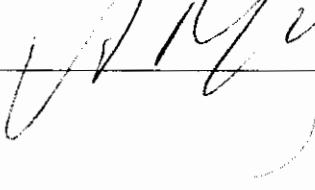
Final Decision

Decision

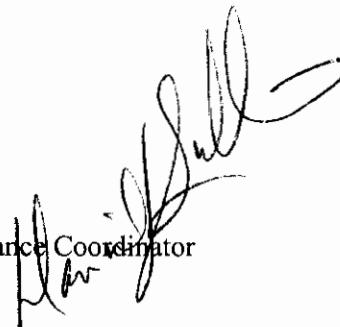
Signature Date

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

INMATE RECEIPT

Name	KELLEY ERIC	Institution	OLD COLONY CORRECTIONAL
Commit No.	A93317	Grievance#	9935
		Date Received	CENTER
			20050425
Signature.	McKenzie Amanda CO I		

TO: Eric Kelley, A93317
FROM: Sergeant Daniel J. Sullivan, Acting Institution Grievance Coordinator
DATE: May 11, 2005
Re: **INMATE GRIEVANCE FORM – Returned/Unaccepted**



Pursuant to review of the Inmate Grievance Form submitted by you with the dated as 5/18/05, outlining several issues/concerns, allegations/complaints, Be advised that your allegation does not fall under the category of an "Emergency". I am returning the grievance to you pursuant to;

491.11 Emergency Grievances

(2) Emergency grievances shall be evaluated by the Institutional Grievance Coordinator to determine whether it is, in fact, an emergency. If the matter is determined not to be an emergency, the grievance form shall be returned to the inmate for proper filing.

And

491.09 Initiating A Grievance

(1) Content of Grievance Forms - All grievances should be legible and must contain the following information:

- (A) the date of occurrence of the incident;
- (B) the name of current institution;
- (C) the name of institution of complaint;
- (D) a brief statement of facts;
- (E) the remedy requested;
- (F) the signatures of both the inmate and staff recipient

And

491.08 General Requirements

(3) A grievance may only be filed concerning one subject matter.

Accordingly, please complete the grievance form(s) (Attachment "A") in accordance with the policy and remit as regular grievances. Also, an Inmate ID # would be appropriate. Thank you.

DJS

CC: File

Pg. 1 of 2

FORM "A"

~~DO NOT ISSUE~~
**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE FORM**

INMATE'S NAME:	INMATE'S #:	DATE:
Eric Kelley	A -	5/17/05
INSTITUTION:	DATE OF INCIDENT:	
MCI Cedar Junction	Upon Arrival	
INSTRUCTIONS:		
<ol style="list-style-type: none"> 1. Refer to 103 CMR 491, Inmate Grievance Policy. 2. Check off a grievance type that best describes your grievance in Block A. 3. In Block B, give a brief and understandable summary of your complaint/issue. 4. List any actions you may have taken to resolve this matter in Block C. Be sure to include the identity of staff members you have contacted. 5. Provide a Requested Remedy in Block D. 		
A. Check off one grievance type only (Listed on reverse side). When filing an Emergency Grievance select Emergency and one additional grievance type.		
<input checked="" type="checkbox"/> EMERGENCY		
B. Give a brief and understandable summary of your complaint/issue. Additional paper may be used, if necessary.		
<p>1) I'm representing myself on 5CA I've been denied law library access. (no envelopes or writing paper)</p> <p>2) I've been denied Atty. Phone calls.</p> <p>3) I have one Sox, one T shirt, one no undershirt</p> <p>4) I am not given my "street cloths" for court.</p> <p>5) The cells are freezing cold.</p> <p>6) There's no fire extinguishers</p> <p>7) my legal documents for my Pro Le Crim. & Civil have been confiscated</p> <p>8) I get no hr recreation.</p>		
C. List any action taken to address/resolve this matter. Include the identity of staff members you have contacted. <p>6 hours a week library (Brenda S. V. Smith) A P.I.N. #, Sox 5x T shirts, 4-8-50 shorts, Street cloths for court. Some heat in the cells, fire extinguishers return of my legal papers, 1hr recreation.</p>		
D. Provide your Requested Remedy. <p>I'm on 52(A) w/o any disciplinary fractions to warrant placement in Walpole, \$ 500.00 and transfer to MCI Norfolk this grievance is pursuant to P.R.L.A.</p>		

Inmate's Signature Eric Kelley Date: 5/18/05

Staff Recipient _____ Date: _____

****DENIED GRIEVANCES MAY BE APPEALED TO THE REVIEWING AUTHORITY WITHIN 10 BUSINESS DAYS.**

(Inmate receipts/responses will be generated via the Inmate Management System.)



The Commonwealth of Massachusetts

Executive Office of Public Safety

Department of Correction

Old Colony Correctional Center

One Administration Road

Bridgewater, Massachusetts 02324



Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

Edward A. Flynn
Secretary

Kathleen M. Donnelly
Commissioner

James Bender
Acting Deputy Commissioner

Bernard Brady
Acting Superintendent

May 12, 2005

Eric Kelley A93317
MCI – Cedar Junction
P.O. Box 100
South Walpole, MA 02071

Dear Mr. Kelley:

Superintendent Brady has referred your correspondence regarding your claims of lack of access to the law library and your lawyer to this office for a response.

You were received at OCCC on 4/8/05 and transferred to SBCC 4/28/05. A review of records indicates that, contrary to your claims, you were allowed access to your attorney and did receive a legal visit while at OCCC.

A review of library logs reveals that you received photocopies on 4/13/05 and 4/20/05.

I trust this has addressed any concerns.

Sincerely,

Carol Lawton
Director of Classification

CL/ljh
CC: B. Brady, Superintendent

NO mention
of law library
access because
I never was
allowed any

- 1) Yes I received
- 2) Yes I copied
- 3) Yes I had an visit. (not in or
Atty. Civil Lawyer)

BUT IT PROVES that
for 20 days I was
Not allowed law library
ACCESS!

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It's unconstitutional for them to deny access to courts. But they're doing it.

Massachusetts Department of Correction
Inmate Telephone System Number Request Form

INMATE NAME: Eric Kelley INMATE PIN #: _____

COMMITMENT #: A93317 UNIT: 509

LANGUAGE PREFERENCE:
ENGLISH SPANISH

Inmate Signature: Eric Kelley Date: 4/19/05

Add (A)/ Delete (D)	Name of Called Party	Relationship	Area Code	Telephone Number
1.	Atty Kernahan Buck	Attorney	617	491-8565
2.				
3.				
4.	Librarian City of Boston	Library		
5.				
6.	Humane Society of Boston	Animal		
7.				
8.				
9.				
10.				

THE FOLLOWING (APPROVED) ATTORNEYS AND PRIVILEGED NUMBERS WILL NOT BE RECORDED

Name	Area Code	Telephone Number
Atty. Kernahan Buck	617	491-8565
Atty. Eva Clark	617	522-7870
Atty.(ADA) Masqi King	617	619-4000
Atty. Kenneth Deimond	617	494-4400
Atty. Kenneth Denava	617	482-0600
Atty. Victoria Kelliter	617	482-6212
Atty. Nancy Reimer	617	406-4500

Your acceptance of a PIN and use of inmate telephones shall be deemed as consent to the conditions and restrictions placed upon inmate telephone calls, including call monitoring, recording, and call detail. 3 way calling not allowed.

Reviewed by Unit Staff Member (name and signature)

Date

* Other Atty listings on back

Conditions & Violations
MCI Cedar Junction

Affidavit Walpole

~~As of 3/14/05~~ Absent any disciplinary infractions
As a pretrial detainee, unadjudged guilty I Eric Kelley was subjected to the following:

- 1) 3 weeks of: A) 24 hour lock-up,
B) No hot water, C) No law library access
(Prole in my criminal & civil matters)
- D) cell tempertures avg. 45° never exceeding 50° E) No laundry access F) 1 pr. sox, 1 Tshirt + 1 undershorts G) No phone calls H) No recreation
- I) A unit and cell with no fire extinguishers J) No cosmetics K) Not allowed reading material

The aforementioned cruel & unusual punishment occurred 24 hrs. daily.

Truthfully Deposed:

Eric Kelley

5/05

Overall treatment
and conditions are
worse then 10 Block & DPU.

U.S. POSTAL SERVICE
MAILING - S-7-11-34
JUN 8 2005

CERTIFICATE OF SERVICE

I Eric Kelley here-by depose
that I ~~sent a copy to~~ did not send the defendants
a copy of here attached
Motion
by way of regular Mail (1st.class)
Pursuant to Bounds v. Smith
because a inmate in Walpole's
H.S.U. do not receive law library
access.

And a good faith
notification copy
to letter to
defendants [DOC]

Truthfully-

Eric Kelley

5/21/05

Atty. Ward Wetzel (508) 351-6556

Eric Wetzel 617 557 1186 (Supreme court)

Atty. Robert Goldstein 617 742 7045

Atty. Stephen Hanes 617 327 4019

note:

All of these
lawyers play some
significant legal
roles in my life.

Eric Kelley

(Atty) - 1424
~~1424~~ 1424
One One
Upper Dennis
St. Bldg.
SP

Block A. Continued (SELECT ONE TYPE ONLY)

ADA
 ASSAULT
 CANTEEN
 CIVIL RIGHTS VIOLATIONS (P.R.L.A.) Prisoner's Rights Litigation Act.
 DENIAL/RESTRICTION OF PRIVILEGES
 EMERGENCY
 FOOD
 GRIEVANCE PROCESS
 HAIRCARE
 HARASSMENT
 INMATE ACCOUNTS
 LAUNDRY
 LAW LIBRARY
 MAIL/GENERAL
 MAIL/LEGAL
 MEDICAL ACCESS
 NEW RELIGIOUS REQUEST
 OTHER
 PHONE/GENERAL
 PHONE/LEGAL
 PHYSICAL PLANT
 POLICY
 PROCEDURE
 PROGRAM ACCESS
 PROPERTY
 PUBLICATIONS
 RELIGION
 REPRISAL FOR GRIEVANCE/COMPLAINT
 RETALIATION
 SEARCHES/INSTITUTION
 SEARCHES/TAC TEAM
 SENTENCE COMPUTATION
 SMU/DDU OPERATIONS
 STAFF MISCONDUCT
 STAFF SEXUAL MISCONDUCT W/INMATES
 SUSPENSION OF NORMAL OPERATIONS
 UNIT OPERATIONS
 USE OF FORCE
 VERBAL ABUSE
 VISITS

See page #2